# EXHIBIT 3

Page 1

1            IN THE UNITED STATES DISTRICT COURT
              FOR THE WESTERN DISTRICT OF TEXAS
2                       WACO DIVISION
          Case No. 6:19-cv-00179-ADA
3

          - - - - - - - - - - - - - - - - - - - - - -x
4

          DYFAN, LLC,
5

                                  Plaintiff,
6

                      -against-
7

          TARGET CORPORATION,
8

                                  Defendant.
9

          - - - - - - - - - - - - - - - - - - - - - -x
10

                              1540 Broadway
11                            New York, New York
12                            November 12, 2019
                              9:42 a.m.
13
14
15          DEPOSITION of BENJAMIN GOLDBERG, an
16    Expert witness in the above-entitled
17    action, held at the above time and place,
18    taken before Arthur Hecht, a Shorthand
19    Reporter and Notary Public of the State of
20    New York, pursuant to the Federal Rules of
21    Civil Procedure, and stipulations between
22    Counsel.
23
24                  *       *       *
25

Page 20

1       how that is achieved with a stationary

2       wireless network, I think you said the

3       manner in how the messages are transferred

4       in the network?

5                MR. TYSON:  I object to the

6          form.

7          A.     So there are thousands of rules

8       in different handshaking processes that go

9       on, I'm more familiar with some, less

10      familiar with others.

11         Q.     Okay.

12         A.     But I've certainly -- I've read

13      lots of code in that space.

14         Q.     Okay.  Does Bluetooth have a

15      specific protocol?

16         A.     Yes.

17         Q.     Are you familiar with that one?

18         A.     Less than with the other

19      wireless protocols, 3G, 4G, things like

20      that.  I'd have -- I have reviewed a fair

21      amount of Bluetooth documentation, but

22      it's been a long time, so I'd have to

23      refresh my memory.

24         Q.     Okay.  Would you refer to

25      protocol itself as a term of art?

Page 21

1          A.     Certainly.

2          Q.     And I think you mentioned that

3     there are thousands of different protocols

4     that are out there in existence?

5          A.     Well, that --

6          Q.     Or are being utilized.

7          A.     There are thousands of rules

8     that the cell phone and the base station

9     have to follow in order to support all the

10    operations that cell phones can perform.

11         Q.     If you wouldn't mind, for the

12    protocols that you are familiar with, I

13    guess we can do, like, 3G, could you

14    describe in a high level how a message is

15    transmitted?

16              MR. TYSON:   Objection.

17       Foundation.   Form.

18         A.     That's tough at a high level,

19    it's so complicated, but the idea is

20    that -- you're talking about transmitting

21    from a cell phone to somewhere else, to

22    some destination --

23         Q.     Yes.

24         A.     -- on the internet?

25         Q.     We can do that, yes, that's

Page 26

1        handshaking process to set up the

2        communication parameters between the base

3        station, is really the right term, and the

4        device.

5             Q.    Okay.  And so again, talking

6        about the handshaking process, does the

7        handshaking process occur with every

8        subsequent communication between the base

9        station and the cell phone?

10                  MR. TYSON:  I object to the

11           form.

12           A.    I'd have to look at the

13        individual -- individual protocol

14        standards to answer that for sure.

15                  My recollection is no, once some

16        initial handshake goes on, the data can go

17        ahead and be transmitted back and forth.

18           Q.    Okay.  When that data's

19        transmitted, is there first any message or

20        information sent to the receiving cell

21        phone that a message is on the way or that

22        a message has been sent?

23           A.    That I don't recall.  There's an

24        acknowledgment process where the -- the

25        recipient has to send back a message

Page 30

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 1      patents that we're dealing with.  Am I
 2      making sense?  Was that clear?
 3           A.    Yes.  When you said this field,
 4      I understood it to be the field, the
 5      technologies that I've identified in
 6      paragraph 16.
 7           Q.    Okay, okay, excellent, thank
 8      you.  You had mentioned WiMAX, could you
 9      please tell me briefly what that refers
10      to?
11           A.    That's another stationary
12      wireless network protocol that really
13      hasn't caught on, Bluetooth became much
14      more popular.  It was just another
15      competing protocol.
16           Q.    Okay.  But that's still
17      considered -- excuse me, WiMAX would still
18      be considered a term of art, though it's
19      not as prevalent as some of the other
20      stationary wireless network protocols?
21           A.    Correct.
22           Q.    And I believe you said that you
23      weren't entirely familiar at this moment
24      with the protocol for Bluetooth, do you
25      happen to recall how messages are
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 1      transmitted using the WiMAX protocol?
 2               MR. TYSON:   I object to the
 3        form.
 4        A.    I don't.  I think what I
 5      testified, Mr. Dahlgren, was that it's
 6      been a long time since I looked at the
 7      Bluetooth standard, and I just don't
 8      recall.
 9        Q.    Yes, and that's fair, I wasn't
10      trying to mischaracterize your testimony.
11               Prior to your involvement in
12      this case, had you heard of the term
13      dedicated short-range communications?
14        A.    I don't recall.  I may have, I'm
15      just not sure.
16        Q.    And since your involvement in
17      this case, do you have an understanding as
18      to what dedicated short-range
19      communications refers to?
20        A.    Are you referring to something
21      in the patent?  I'm not sure what context.
22        Q.    Yes, so let's --
23        A.    In my declaration?
24        Q.    Let's see where I can point you
25      to that most easily.  Bear with me one
```

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1          Q.     If at any time you need to take

2     a break, please just let me know.

3          A.     Sure.

4          Q.     And I'll try to stop as soon as

5     we can.

6          A.     So prior to this case, I was not

7     familiar with the DSRC, dedicated

8     short-range communications referred to in

9     Exhibit 4.

10          Q.     And if you look at, it's page

11     seven of 35 of Exhibit 4, the provisional

12     application, the beginning of the third

13     paragraph, that's the third sentence, it

14     says however, to make use of this spectrum

15     in a mobile environment required

16     development of new communications

17     protocols.

18          A.     I see that, yes.

19          Q.     And then you see the sentences

20     following that where it discusses some

21     IEEE standard?

22          A.     IEEE 802.11 standard is what we

23     think of as Wi-Fi.

24          Q.     And so the following sentence

25     says that it was modified to allow what is

Page 35

1        known as association-less protocol

2        identified as IEEE 802.11p, do you see

3        that?

4             A.    Yeah, I believe the word is

5        association-less.

6             Q.    Association-less, excuse me if I

7        misspoke, thank you.

8                  Do you know what modifications

9        were made?

10            A.    I do not, other -- beyond what's

11       explained in this paragraph.

12            Q.    Okay.  And further down in the

13       same paragraph, the sentence beginning

14       because a system is radio based, all

15       terminals can hear all messages

16       transmitted within radio range?

17            A.    I see that.

18            Q.    Do you understand hearing a

19       message to be different than receiving it?

20       I was just curious about the use of the

21       different terms.

22            A.    Yes.  Receiving a message means

23       receiving the data sent over the air that

24       is intended for that device.  Hearing, as

25       it's being used here, means being able to

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 1       correctly, there's different ways that a
 2       base station may notify a cell phone that
 3       this message is for you?
 4            A.     Yes.
 5            Q.     Okay.  Are you familiar with
 6       vehicle infrastructure integration, it's
 7       also discussed in the provisional
 8       application, I believe it's page seven of
 9       35 of Exhibit 4 in the very first
10       paragraph?
11            A.     I was not familiar with it prior
12       to reading this provisional, my knowledge
13       of it is based on the provisional.
14            Q.     Okay.  So are you familiar with
15       the DSRC/WAVE, W-A-V-E, concept?
16            A.     Not beyond what's described in
17       this document.
18            Q.     And so it's fair to say that
19       you're not familiar with the type of
20       communication protocol that DSRC/WAVE
21       utilized?
22                   MR. TYSON:  I object to the
23            form.
24            A.     That's correct, beyond what was
25       described in this document.
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```
 1        Q.     And given that your familiarity

 2    with vehicle infrastructure integration

 3    and DSRC/WAVE is based on the information

 4    in Exhibit 4, provisional application, is

 5    it fair to say that you couldn't opine on

 6    whether those are terms of art?

 7               MR. TYSON:   I object to the

 8       form.

 9        A.     I guess independent of what is

10    disclosed here, I would not have known

11    those to be terms of art.  The fact that

12    they are -- it refers to the DSRC as a

13    particular mode of communication, it

14    appears to be a term of art for people

15    working in that area, but I wouldn't have

16    known it independently of this provision.

17        Q.     Okay.  At the bottom of page

18    seven of 35 of Exhibit 4, there's a

19    reference to a suite of standards known as

20    IEEE 1609 wires access in vehicular

21    environments wave.

22        A.     I see that.

23        Q.     And the provisional states that

24    this suite address is security net,

25    networking and messaging, as well as
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```
 1        channel management, do you see that?

 2            A.      I do.

 3            Q.      What is meant by channel

 4        management?

 5                    MR. TYSON:   I object to the

 6            form.

 7            Q.      To the best of your

 8        understanding.

 9            A.      I'd have to -- to look at the

10        standard.   In general, it means choosing

11        the mode of communication that works given

12        the channel, the quality of the channel,

13        which is how much interference there is

14        from other sources over the air.   And also

15        who gets to transmit on what channel.

16                    So a channel is typically some

17        range of frequencies, and different mobile

18        devices could be assigned different

19        channels to transmit on, and so the base

20        station has to assign channels depending

21        on the protocol, assign channels to

22        different mobile devices.

23            Q.      Okay.  And the reference to

24        networking and messaging that is addressed

25        by this standard, is that similar to the
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1          network communications protocols that

2          we've been discussing at a high level?

3                    MR. TYSON:   I object to the

4             form.

5             A.      Again, I can't answer for sure

6          not looking at this IEEE standard, but

7          that's what I would expect, that defines

8          how the initial association between a

9          mobile device and a base station and the

10         definition of what a message actually is,

11         a packet, a message, and how to route

12         them.

13            Q.      Okay.  And the IEEE standards

14         that are identified here, those are --

15         strike that.

16                    The IEEE standards referenced in

17         the provisional application of Exhibit 4,

18         those are standards that would be well

19         known to a person skilled in the art, is

20         that fair to say?

21                    MR. TYSON:   I object to the

22            form.

23            A.      Well, I think it would have been

24         known to a person of skill in the art who

25         happened to be working in wireless access

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1          Q.     And that would hold true with

2     pretty much every type of communication

3     protocol for networks, is that fair?

4               MR. TYSON:   I object to the

5      form.

6          A.     Every standardized communication

7     protocol, yes, one of skill could read the

8     standard and understand that there is code

9     implementing that standard on the devices.

10         Q.     Okay.  And the code that would

11    be implemented on the devices for using a

12    particular protocol -- strike that, strike

13    that, I'll get back to that.

14               So we talked about communication

15    protocols, are you familiar with the term

16    transfer protocol?

17         A.     I am.  There are various

18    transfer protocols that are used for

19    transferring files, for example, large

20    blocks of data.  FTP, which stands for the

21    file transfer protocol, comes to mind.

22         Q.     Okay.  So that is somewhat

23    different than the communication protocols

24    that we've been discussing?

25         A.     It's built on top of the

Page 46

1       communication protocol.

2            Q.    Okay.  And would you consider

3       transfer protocols to be a term of art?

4            A.    In the context that I was just

5       discussing, yes.

6            Q.    And the security protocols, are

7       those also protocols that, if I

8       mischaracterize what you said before,

9       please correct me, that are kind of on top

10      of the communication protocol?

11           A.    Yes, typically they define how

12      data is encrypted before being sent via

13      the communication protocols we've been

14      discussing.

15           Q.    Okay.

16           A.    As a general term.

17           Q.    Understand.  And have you heard

18      of the term back haul network?

19           A.    Say that again?

20           Q.    Back haul network?

21           A.    H-A-U-L?

22           Q.    Correct.

23           A.    It didn't ring a bell.  If it's

24      in the patents provisionals of my

25      declaration, I'd be happy to take a look,

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1          Q.    So then -- strike that.

2                If one had, like, a module of

3     software code that could perform some

4     functions, is that equivalent to an

5     application?

6                MR. TYSON:   I object to the

7        form.

8          A.    It depends what that software

9     code did.  So an application is something

10    that provides information to a user.  So

11    there's lots of software running on your

12    computer that you never see, such as the

13    operating system.

14         Q.    Yup.

15         A.    So that would not be considered

16    an application.  An application is

17    something that performs a specific

18    function to provide a service to the user.

19         Q.    Okay.  And as with user

20    interfaces, are there off-the-shelf

21    applications that a person skilled in the

22    art would be aware of that they could use

23    depending on their needs in developing

24    some type of network system?

25         A.    Certainly.

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1      Q.    Can you think of any examples of

2    applications that might be useful in the

3    context of a network?

4              MR. TYSON:   I object to the

5      form.

6      A.    Well, there are -- certainly

7    there are web browsers, for example, that

8    allow users to retrieve documents, when

9    servers interact with web servers.  There

10   are file transfer applications, I

11   mentioned FTP applications, that are used

12   for transferring files.

13             I mean, there are numerous apps

14   that you can buy from the app store that

15   cause communication between a mobile

16   device and a server, so the answer is yes,

17   there's lots of off-the-shelf applications

18   you can buy to operate in the context of a

19   network.

20     Q.    And when you refer to web

21   browsers, that would include those that

22   are configured for mobile devices versus

23   PCs?

24     A.    Certainly.

25     Q.    So Chrome on my Android phone,

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```
 1      would that be an example of an

 2      application?

 3            A.     Yes.

 4            Q.     So is it fair to say application

 5      is a term of art?

 6            A.     Yes.

 7            Q.     And I think we already covered

 8      this, but if I recall correctly, you said

 9      that a software program encompasses more

10      than what an application encompasses, the

11      latter being limited to providing

12      information to a user, is that fair?

13                  MR. TYSON:   Objection to the

14         form.

15            A.     Yes, applications are an example

16      of software programs where they interact

17      with the user, and as I mentioned, there

18      are lots of software programs that are not

19      applications because they manage resources

20      on a device without the user being aware

21      of them.

22            Q.     And I think we may have referred

23      to this, but mobile devices can have a

24      user interface, correct?

25            A.     Mobile devices do have a user
```

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1          Q.     And given that your familiarity

2     with vehicle infrastructure integration

3     and DSRC/WAVE is based on the information

4     in Exhibit 4, provisional application, is

5     it fair to say that you couldn't opine on

6     whether those are terms of art?

7               MR. TYSON:   I object to the

8          form.

9          A.     I guess independent of what is

10    disclosed here, I would not have known

11    those to be terms of art.  The fact that

12    they are -- it refers to the DSRC as a

13    particular mode of communication, it

14    appears to be a term of art for people

15    working in that area, but I wouldn't have

16    known it independently of this provision.

17         Q.     Okay.  At the bottom of page

18    seven of 35 of Exhibit 4, there's a

19    reference to a suite of standards known as

20    IEEE 1609 wires access in vehicular

21    environments wave.

22         A.     I see that.

23         Q.     And the provisional states that

24    this suite address is security net,

25    networking and messaging, as well as

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1      channel management, do you see that?

2          A.    I do.

3          Q.    What is meant by channel

4      management?

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10     standard.  In general, it means choosing

11     the mode of communication that works given

12     the channel, the quality of the channel,

13     which is how much interference there is

14     from other sources over the air.  And also

15     who gets to transmit on what channel.

16              So a channel is typically some

17     range of frequencies, and different mobile

18     devices could be assigned different

19     channels to transmit on, and so the base

20     station has to assign channels depending

21     on the protocol, assign channels to

22     different mobile devices.

23         Q.    Okay.  And the reference to

24     networking and messaging that is addressed

25     by this standard, is that similar to the

Page 40

1      network communications protocols that

2      we've been discussing at a high level?

3                  MR. TYSON:   I object to the

4         form.

5         A.      Again, I can't answer for sure

6      not looking at this IEEE standard, but

7      that's what I would expect, that defines

8      how the initial association between a

9      mobile device and a base station and the

10     definition of what a message actually is,

11     a packet, a message, and how to route

12     them.

13        Q.      Okay.  And the IEEE standards

14     that are identified here, those are --

15     strike that.

16                The IEEE standards referenced in

17     the provisional application of Exhibit 4,

18     those are standards that would be well

19     known to a person skilled in the art, is

20     that fair to say?

21                  MR. TYSON:   I object to the

22        form.

23        A.      Well, I think it would have been

24     known to a person of skill in the art who

25     happened to be working in wireless access

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1              Just to take a step back for

2      terminology, when I refer to a

3      communications network, if I refer to,

4      like, a receiving node, is it all right to

5      use that as a generic term, it could be a

6      cell phone or some other -- like a laptop

7      or a desktop --

8          A.    Yes.

9          Q.    -- is that fair?

10         A.    Yes, I understand that.

11         Q.    So are you aware of any

12     communication protocols that would --

13     strike that.

14              Are you aware of any

15     communication protocols where the

16     receiving node is provided an advanced

17     notification that it will be receiving a

18     message?

19         A.    Sitting here, I don't recall,

20     I'd have to look at the standards for the

21     various communication protocols.

22         Q.    Okay.  And I know you mentioned

23     thousands of rules, I wasn't clear -- it

24     wasn't clear to me if you also were saying

25     there's thousands of communication

Page 68

1    protocols, if you had to just ballpark and

2    just in a rough sense, like how many

3    different communications protocols do you

4    think there are in existence?

5         A.    So if you're defining

6    communication protocol as a single -- a

7    single collection of standards that all

8    work together to implement one network

9    system, so for example LTE or 3G, so I

10   would consider each of those a protocol

11   that are -- that provide thousands of

12   rules that the devices must follow in

13   order to implement that protocol.

14              And so if the protocol is that

15   at the level of LTE or 3G or 2G, you know,

16   I don't know how many are out there, but

17   I'm aware of 20 or 30 of them.

18        Q.    Okay.

19        A.    And each one is supported by

20   hundreds or thousands of rules.

21        Q.    Okay.  So I would like to walk

22   through some of the claims in the patent

23   suit, Exhibit 1 and Exhibit 2.   And first

24   I'd like to go to claim one of the 899

25   patent.  And I want to focus on a specific

Page 83

1      looking at -- it's line 61, the

2      application receives an indication of a

3      receipt of one or more messages, to

4      paraphrase that limitation, do you see

5      that?

6            A.    I see that passage, yes.

7            Q.    And earlier we talked about

8      messages, and messages are a term of art,

9      correct?

10           A.    Yes.

11           Q.    And messages can have specific

12     formats depending on the protocols that

13     are being used, correct?

14           A.    Yes.

15           Q.    And if a person skilled in the

16     art knew of the particular protocol being

17     used would -- strike that.

18                 A person skilled in the art,

19     knowing the protocol, would then

20     understand the makeup of the message that

21     was being sent pursuant to that protocol,

22     is that fair?

23                 MR. TYSON:   I object to the

24        form.

25           A.    Depending on the protocol used

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1       input is received.

2            Q.     Yes, and you see before column

3       29, it says received an indication, and

4       then later in column 30, it refers to the

5       indication?

6            A.     Yes, I see that.

7            Q.     And you're familiar with patent

8       drafting, that the first time something is

9       introduced, it's like an or a, and then

10      later it's the or said?

11           A.     Yes.

12           Q.     Okay.  So going back to the

13      question I was asking before, if you look

14      at disputed claim term 16 and what the

15      system is configured to do, much of

16      those -- strike that.

17                  Going back to my earlier

18      question, if you look at disputed claim 16

19      and what the system is configured to do in

20      that wherein clause, much of that is --

21      appears to be done by kind of

22      subcomponents of the system, is that fair?

23           A.     Generally speaking, I would say

24      yes, but it talks -- where the wherein

25      clause talks about the system being

Page 165

1    configured to do something, it could refer

2    to one of the already mentioned components

3    of that system doing it.

4         Q.    That was -- you made that point

5    much more succinctly than I was able to

6    do.

7              And so again, looking at this,

8    the wherein clause recites that the system

9    was configured to achieve the limitation

10   of disputed claim term 16, it's not adding

11   any new or separate structural element to

12   the claim, is that fair?

13        A.    It's not adding any new

14   component, but rather describing what the

15   system already introduced can also do or

16   perhaps constraining what the system can

17   do.

18        Q.    Okay.  And as we discussed, that

19   system is all of the components that were

20   recited in claim one, essentially,

21   correct?

22        A.    Yes.

23        Q.    Okay.  And so here as system is

24   defined as all these various components in

25   claim one of the 899 patent, you would

Page 209

1    when you were being informed of the legal

2    standards, so I was just curious.

3         A.    I don't recall.

4         Q.    Okay.  In looking at the

5    materials listed in your declaration, and

6    you said that the only other thing you had

7    looked at aside from that was some Agis

8    trial transcript, I didn't see reference

9    to the prosecution histories of the 899

10   patent or the 292 patent, were those not

11   part of the materials that you reviewed in

12   forming your opinions?

13        A.    I don't -- that's correct, I

14   don't recall reviewing those.

15        Q.    Okay.  You don't recall or you

16   didn't or --

17        A.    I certainly didn't review them

18   in preparation for this deposition.

19        Q.    Okay.

20        A.    And to the best of my knowledge,

21   this list is complete.

22        Q.    Okay.

23        A.    So I don't -- I don't believe I

24   reviewed the file histories for the 899

25   and 292.

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1          Q.    Okay.  You would agree that

2     there's standard modules of software code

3     that are well known and can be identified

4     by name as connoting sufficient structure

5     in a claim?

6               MR. TYSON:   I object to the

7          form.

8          A.    I mean, I'd have to -- I guess

9     I'd have to see the context, but if they

10    were identified by name in a claim, I

11    suspect that would provide some -- some

12    structure, but I'd have to look at the

13    actual example.

14         Q.    And I don't know if, like for

15    example, a Bluetooth communication

16    protocol would be considered like a

17    standard module software code identified

18    by name, that might be a bad example.

19         A.    I'd have to see the context, but

20    as we've discussed, you know, reciting the

21    Bluetooth communications protocol does

22    inform one of skill about certain features

23    of the Bluetooth --

24         Q.    Okay.

25         A.    -- system.

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1          Q.     And are there classes of

2      software subroutines that are well known

3      to perform various functions that a person

4      skilled in the art could utilize if they

5      were developing a network?

6          A.     Yes, so one of skill would know

7      about various resources for getting

8      software for network communications.

9          Q.     And are there common graphic

10     libraries with corresponding APIs that a

11     person with skill in the art can use to

12     generate images on display?

13              MR. TYSON:   I object to the

14         form.

15         A.     If a developer knew what they

16     wanted -- what images they wanted to

17     generate on the screen, then there are

18     common libraries that can be used to do

19     that.

20         Q.     And they would have a

21     corresponding application program

22     interface that could be used in connection

23     with that?

24         A.     Yes, most graphics libraries or

25     user interface libraries provide APIs that

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1        can be used by a developer.

2            Q.     Okay.   You had mentioned this

3        Agis matter, do you recall opining on the

4        term CPU software?

5            A.     I don't recall, I didn't notice

6        that in my review of my testimony in that

7        case.

8            Q.     We talked, I think, a little bit

9        before, and correct me if I'm wrong, we're

10       talking about applications and programs,

11       and I believe applications were a subset

12       of programs, is that correct?

13           A.     Yes.

14           Q.     Are you aware that courts have

15       found that the term program is

16       sufficiently specific so that it does not

17       fall under means plus function?

18           A.     I'm not -- I'm not aware one way

19       or the other, I don't know the case law

20       regarding that.

21           Q.     Okay.   Do you recall doing work

22       for a party, I believe it's called

23       Typemock?

24           A.     Yes.

25           Q.     Do you recall opining on a

Page 213

1      computational apparatus?

2           A.     I don't have any specific

3      recollection.

4           Q.     And would you agree that there's

5      standard modules of software that a person

6      that's skilled in the art would know to

7      use to generate a display?

8                  MR. TYSON:   I object to the

9           form.

10          A.     Yes.   Again, if the developer

11     knows what he wants to display, then there

12     are software modules he can use to

13     generate the display of the content that

14     he wants to display.

15          Q.     And would you agree that also

16     applies to outputting a message that's

17     based on information that's received?

18                 MR. TYSON:   I object to the

19          form.

20          A.     Well, if the developer knows

21     exactly how they want to take information

22     that's been received and generate a

23     message from that, then the developer

24     would know how to do that using a software

25     library.

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1      Q.      Do you recall opining that a

2    symbol generator is a standard module

3    software code that was well known in the

4    art, and that the term symbol generator

5    would have been sufficient to identify

6    these modules of software code to one with

7    skill?

8      A.      So I recall opining that a user

9    -- one of skill using the term single

10   generator, we're talking about displaying

11   symbols on the screen, that the user could

12   figure out how to generate symbols, a

13   symbol generator, but using a software

14   library.

15     Q.      What it says, and probably I

16   didn't get copies of this, furthermore,

17   one of ordinary skill in the art would

18   have understood that a symbol generator as

19   a standard module software code that was

20   well known in the art and that the term

21   symbol generator would have been

22   sufficient to identify these modules of

23   program code to one of ordinary skill in

24   the art, so I don't think that you were

25   saying that one would then have been able

Page 215

1      to create the program code, I think you

2      said it was already available?

3                MR. TYSON:   Objection.

4         Foundation.

5         A.     Right, what I said was that --

6      well, you read it, but upon reading the

7      term symbol generator, the user would then

8      know, oh, I can go get this piece of

9      software that displays symbols on the

10     screen, which is what the claim symbol

11     generator does.

12        Q.     Did you consider whether any of

13     the claim terms that are recited on your

14     declaration, whether any of those were

15     well known to art and refer to standard

16     modules of software code?

17        A.     Well, I did for some of the

18     terms that we talked about, such --

19     related to the various communications

20     protocols.  In the Agis case which you're

21     reading from, I was asked by Counsel to

22     opine on whether a person upon -- a person

23     of skill upon reading the various claim

24     elements would be able to identify

25     software that accomplished the functions

Page 216

1      listed in the claim, and that was from

2      Counsel in the Agis case.

3          Q.     Okay.

4          A.     In this matter, as I set forth

5      in my declaration, I was asked to

6      determine if the patent specification of

7      the claims themselves disclosed the

8      structure for performing the functions in

9      the claims, and so it was a different

10     exercise, but certainly for some of the

11     claim terms that we've discussed,

12     including internet protocol, Bluetooth

13     protocol, you know, I knew immediately

14     that that corresponded to certain

15     libraries of software that one could have,

16     that one could get.

17         Q.     You can't include that

18     information in your declaration, however,

19     correct?

20         A.     Well, I was not asked to opine

21     on the limitations regarding Bluetooth or

22     internet protocol.

23         Q.     Even as they were contained in

24     some of the disputed claim terms?

25         A.     Well, my declaration speaks for

Page 217

1      itself, and that is I was asked to

2      determine whether there was structure in

3      the claims or in the specifications for

4      the claim terms as a whole that I listed

5      in my declaration.

6           Q.      Do you think that it was a

7      mistake not to examine some of the

8      communication protocols and how messages

9      were transmitted to see if it provided

10     support for the functionality recited in

11     the claims, and to the extent that

12     specification was recited in the

13     provisional or in the 197 application?

14               MR. TYSON:   I object to the

15          form.   Mischaracterizing testimony.

16          A.      I was asked to review the claims

17     and the specification for certain

18     limitations, and asked to opine on whether

19     there was sufficient structure disclosed

20     in the claims and the specification to

21     support the claim functionality that I was

22     asked to opine about.

23               Certainly I would have

24     considered citations within the

25     specifications of the claims to specific

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1      protocols, for example, I would have

2      considered those in forming my opinions.

3               As you'll read in my

4      declaration, the bases for my opinions was

5      not due to ignoring any communications

6      protocols.

7          Q.    I'm just curious, you know, for

8      example, when the Bluetooth communication

9      protocol was explicitly spelled out in the

10     claim that you didn't, I guess, review

11     parts of that in the process of forming

12     your opinion regarding whether there was

13     sufficient structure in the claim for

14     performing the function.

15         A.    I think you'll see in my

16     declaration that my opinions were not

17     based on what the Bluetooth protocol did

18     or did not provide, but rather what was

19     disclosed in the patent.

20         Q.    Okay.  And which also -- I mean,

21     the patent did disclose Bluetooth

22     communication protocol, right?

23         A.    Right, you see that my opinions

24     are not related to that aspect.

25         Q.    Okay.  And at this time, since

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 1        you haven't recently reviewed the

 2        Bluetooth communication protocol, you

 3        can't opine on whether or not it actually

 4        would provide any support for the claims

 5        having sufficient structure, is that fair?

 6             A.     No, I don't think that's fair.

 7             Q.     So without knowing the Bluetooth

 8        communication protocol and, for example,

 9        the procedures and rules and details for

10        exchanging messages, you can still --

11        maybe it's best if I give an example.

12                   So for example, it was disputed

13        claim term eight, I'm looking at the 899

14        patent, claim one, it's lines 58 through

15        64, and it was an application configured

16        for execution by a plurality of mobile

17        devices.  The application when executed

18        configured to and then for disputed claims

19        were made received indication of a receipt

20        without solicitation from the at least one

21        broadcast short-range communications unit

22        and via the Bluetooth wireless

23        communications protocol of one or more

24        messages including the address portion and

25        the identifier including at least three
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1      fields and at least one value.

2               And if I recall, you took issue

3      with the receiving and indication of

4      receipt as not being supported, and based

5      on our discussion of today, it seems that

6      the Bluetooth wireless communications

7      protocol could potentially have that be

8      part of the way messages are handled in a

9      network?

10               MR. TYSON:   Objection to the

11         form.

12         A.     So my understanding is that

13      there's not sufficient structure to simply

14      refer to the Bluetooth wireless

15      communications protocol and assume that

16      the one of skill reading the claim would

17      need to dig through every aspect of the

18      Bluetooth wireless communications protocol

19      to figure out if there's any way to

20      receive an indication of a receipt, even

21      though it's not disclosed in the patent

22      specification, and so I did not dig into

23      the Bluetooth wireless communications

24      protocol trying to search for every

25      possible way that an indication of a

Page 221

1    receipt could be received, but rather

2    understood that that should be disclosed

3    in the patent specification.

4         Q.     And so it's not your opinion

5    that the hypothetical person of ordinary

6    skill in the art would have known the

7    Bluetooth standard, it's your opinion that

8    they would not have dived through it to

9    see if the particular functionality

10   recited in the disputed claim made was

11   part of the Bluetooth wireless

12   communications protocol, which we, I

13   think, agreed required that both the

14   sending node and receiving node have some

15   type of software so that they can abide by

16   that protocol?

17             MR. TYSON:   I object to the

18        form.

19        A.     My understanding is that the

20   patentee is required to disclose such -- a

21   claimed element like this without

22   requiring one of skill to be able to

23   construct the structure for this element

24   based on one of skill's knowledge, in this

25   case, one of skill's knowledge of the

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1     wireless communications protocol.

2          Q.     You agreed earlier that

3     Bluetooth wireless communication protocol

4     is a term of art, correct?

5          A.     Yes.

6          Q.     Okay.  Okay.  I understand your

7     position, I don't necessarily agree, but I

8     don't know if there's value in belaboring

9     the point.

10         A.     Right.

11         Q.     But it did occur to me that

12    there were certain disclosures in terms of

13    standards and communication protocols and

14    the like in the provisional that you did

15    not discuss any detail to see if they may

16    provide support for the claim limitations,

17    is that fair that you did not go through

18    that exercise?

19         A.     You know what?  I certainly did

20    for the provisional, and for the

21    specification of the 197, I went through

22    the exercise of determining what exactly

23    was identified as structure and how it

24    correlated to the claims.

25         Q.     But I guess my point is that you

Page 223

1      did not go further when it talks about,

2      for example, modifying IEEE 802-11 to

3      be -- to allow what is known as a

4      association-less protocol --

5           A.    Association-less?

6           Q.    I keep saying that, association-

7      less protocol, correct.  There was also

8      the IEEE 1609 wireless access in vehicular

9      environments wave, and I didn't see much

10     of -- any discussion of that.

11          A.    Correct.

12          Q.    You know, with some of the

13     claims reciting very specific

14     communication protocols, you know, such as

15     Bluetooth.  You did not go through the

16     exercise of diving into those various

17     standards or protocols to see if reference

18     to them was enough to provide support for

19     the claim limitations, is that correct?

20          A.    I -- I think the way to say it

21     is I did not dive into those protocols

22     searching for support for a particular

23     function claimed in the 899 or the 292

24     patent.

25          Q.    Okay.

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1          A.    And I'll note the provisional

2     only mentions Bluetooth in passing.

3          Q.    I guess that begs the question,

4     it's still mentioned, though, right?

5          A.    It does appear once.

6          Q.    And it does appear in some of

7     the -- certain claims as well, correct?

8          A.    Of these later patents?

9          Q.    Yes.

10          A.    Certainly.

11               MR. DAHLGREN:  Yes.  I think I

12          just need a minute or two to see if I

13          have anything left, I think I may have

14          covered it all.

15               [A recess was taken.]

16               MR. DAHLGREN:  Unless your

17          Counsel has any questions for you, I

18          don't have any further questions at

19          this time, and thank you very much,

20          Dr. Goldberg, I appreciate your

21          participation today.

22               THE WITNESS:  Thank you.

23               MR. TYSON:  I've just got a

24          couple, couple of questions.

25               MR. DAHLGREN:  Then I may